

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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	:	
WILFREDO GARCIA,	:	2:10-cv-05849 (JLL)(CCC)
	:	
Plaintiff	:	
	:	
vs.	:	ANSWER and DEFENSES OF
	:	PRESSLER & PRESSLER, LLP
	:	
	:	
PRESSLER & PRESSLER, LLP,	:	
	:	
Defendant	:	
	:	
=====	:	

Defendant, Pressler and Pressler, L.L.P., (“Pressler”) by way of answer to Plaintiff’s complaint (the “Complaint”) says:

I. PARTIES

1. Admitted.
2. Defendant neither admits nor denies this paragraph which makes allegations regarding Plaintiff’s domicile and leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.
3. Admitted.

II. JURISDICTION AND VENUE

4. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.
5. Admitted.

III. PRELIMINARY STATEMENT

6. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

7. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

8. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

9. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

10. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

11. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

12. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

13. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

14. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

15. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

16. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

17. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

18. Defendant denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

IV. FACTS

19. Admitted.

20. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs.

21. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

22. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate legal argument and characterization as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

23. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Denied to the extent that Default was entered by the Court without any action on the part of Defendant.

29. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

30. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs.

31. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs.

32. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs.

33. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

34. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves plaintiff to his proofs. As to any characterization of court records and/or any documents filed with the court, both the court's records and the documents speak for themselves.

35. Denied.

36. Defendant denies any factual allegations contained within this paragraph. As to any characterization of court records and/or any documents filed with the court, both the court's records and the documents speak for themselves.

37. Defendant denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

38. Defendant denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

39. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists of a statement by Plaintiff. Defendant denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

VII. FIRST CAUSE OF ACTION

40. Defendant Pressler repeats and incorporates by reference all responses made in the above paragraphs.

41. Denied.

VIII. SECOND CAUSE OF ACTION

42. Defendant Pressler repeats and incorporates by reference all responses made in the above paragraphs.

43. Denied.

IX. THIRD CAUSE OF ACTION

44. Defendant Pressler repeats and incorporates by reference all responses made in the above paragraphs.

45. Denied.

WHEREFORE Defendant, Pressler, hereby requests dismissal of Plaintiff's Complaint with costs and attorney's fees as allowed under the Fair Debt Collection Practices Act 15 U.S.C. §1692k (a)(3) or otherwise by statute or rule of court.

SEPARATE DEFENSES

1. Plaintiff fails to state a claim under State or Federal Statutory Law.
2. Plaintiff fails to states a claim for which relief may be sought.
3. Any damages allegedly sustained by Plaintiff were a result of actions by 3rd parties over whom Defendant had no dominion or control. Without limitation see Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6)(C).
4. Any damages allegedly sustained by Plaintiff were the result of the negligence or wrongdoing of the Plaintiff, which negligence or wrongdoing exceeded any alleged wrongdoing of Defendant.
5. Any claims of the Plaintiff relating to events prior to November 24, 2010 are barred by the one year statute of limitations as a matter of law under the FDCPA.
6. Defendant violated no duty owed to the Plaintiff.
7. Defendant reserves the right to amend this answering pleading following the receipt of discovery.
8. Defendant complied with all applicable statutes regarding the collection of the underlying debt.
9. By his own actions and otherwise the Plaintiff herein is not entitled to equitable relief.
10. Defendant made no material misrepresentations.
11. Plaintiff did not rely on any representation made by Defendant.
12. To the extent Plaintiff claims to or did in fact rely upon any representations by Defendant such reliance was unjustified.
13. Defendant denies the injuries and damages allegedly sustained by Plaintiff resulted from any actions by Defendant.
14. The Defendant therefore reserves the right to assert all defenses which may be pertinent

once the precise nature of the claims at issue is ascertained through discovery.

15. In the event that plaintiff is able to adequately plead a violation of the FDCPA, his entitlement to statutory damages is capped at \$1,000 per action, not per violation. See Goodmann v. Peoples Bank, et al., 209 Fed. Appx. 111 (3d Cir. 2006); Brown v. Law Offices of Butterfield, U.S. Dist. LEXIS 9822 (E.D. Pa. 2004); Dowling v. Kucker Kraus & Bruh, LLP, 2005 U.S. Dist. LEXIS 1100 (S.D. NY. 2005); Mann v. Acclaim Fin Servs, 348 F. Supp. 2d 923 (S.D. Ohio 2004).

16. Defendant asserts on information and belief that Plaintiffs' claims were brought in bad faith and for the purposes of harassment and to obtain advantage in the action against Plaintiff in the matter entitled New Century Financial Services, Inc. v Wilfredo Garcia, Docket no. DC-005863-09 in the Superior Court of Mercer County, New Jersey and Defendant requests an award of attorneys fees and costs pursuant to 15 U.S.C.A. §1962k(a)(3) and Sanctions pursuant to FRCP 11.

DEMAND FOR SPECIFICATION OF MONEY DAMAGES

Pursuant to Local Rule 8.1, Pressler demands that Plaintiff, within fourteen (14) days, furnish Pressler with a written statement detailing the amount of damages claimed, including, but not limited to, all concrete damages in the form of out of-pocket expenses, and pecuniary loss, as asserted in the Complaint, and the methodology in assessing such actual damages.

Dated: January 10, 2011

s/Mitchell L. Williamson
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